

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Daniel Giansante	Team: Squad #5	CCRB Case #: 202003690	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 05/29/2020 6:13 PM	Location of Incident: § 87(2)(b) § 87(2)(b) § 87(2)(b)	Precinct: 81	18 Mo. SOL 11/29/2021	EO SOL 5/4/2022	
Date/Time CV Reported Fri, 05/29/2020 9:23 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Fri, 05/29/2020 9:23 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Donal Schumacher	19766	959213	081 PCT
2. POM Raul Torres	24953	958127	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jimmy Romero	05585	962062	081 PCT
2. POM Ryan Macero	11532	966179	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Raul Torres	Abuse: Police Officer Raul Torres entered § 87(2)(b) Apt. § 87(2)(b) in Brooklyn.	
B.POM Raul Torres	Abuse: Police Officer Raul Torres seized § 87(2)(b)'s property.	
C.POM Raul Torres	Force: Police Officer Raul Torres used physical force against § 87(2)(b)	
D.POM Raul Torres	Force: Police Officer Raul Torres used a non-lethal restraining device on § 87(2)(b)	
E.POM Raul Torres	Force: Police Officer Raul Torres used a non-lethal restraining device on § 87(2)(b)	
F.POM Raul Torres	Force: Police Officer Raul Torres used a non-lethal restraining device on § 87(2)(b)	
G.POM Raul Torres	Force: Police Officer Raul Torres used a non-lethal restraining device on § 87(2)(b)	
H.POM Raul Torres	Force: Police Officer Raul Torres used a non-lethal restraining device on § 87(2)(b)	
I.POM Raul Torres	Force: Police Officer Raul Torres used a non-lethal restraining device on § 87(2)(b)	
J.POM Donal Schumacher	Force: Police Officer Donal Schumacher used physical force against § 87(2)(b)	

Case Summary

On May 29, 2020, § 87(2)(b) filed this complaint on the CCRB website.

On May 29, 2020, at approximately 6:13 p.m., in the shared courtyard of § 87(2)(b) and § 87(2)(b) in Brooklyn, Police Officers Jimmy Romero, Donal Schumacher, and Raul Torres of the 81st Precinct approached § 87(2)(b) and § 87(2)(b) on the elevated landing in front of their residence. The officers knew that § 87(2)(b) had an active bench warrant and began attempting to arrest him. § 87(2)(b) took § 87(2)(b)'s cellphone and entered her residence, and PO Torres followed her inside (**Allegation A: Abuse of Authority**, § 87(2)(g)). PO Torres seized a cellphone from her (**Allegation B: Abuse of Authority**, § 87(2)(g)). § 87(2)(b) approached PO Torres, prompting PO Torres to allegedly shove or attempt to strike § 87(2)(b) (**Allegation C: Force**, § 87(2)(g)). PO Torres deployed his Taser against § 87(2)(b) (**Allegation D: Force**, § 87(2)(g)). After § 87(2)(b) removed the Taser prongs, PO Torres used the Taser to drive stun § 87(2)(b) four times (**Allegations E-H: Force**, § 87(2)(g)). PO Torres began handcuffing § 87(2)(b) before using the Taser to drive stun him one final time (**Allegation I: Force**, § 87(2)(g)). After both § 87(2)(b) and § 87(2)(b) were handcuffed, PO Schumacher allegedly kicked § 87(2)(b) (**Allegation J: Force**, § 87(2)(g)).

§ 87(2)(b) was arrested and charged with § 87(2)(a) 160.50 (Board Review 01). This arrest was subsequently sealed. § 87(2)(b) was arrested and charged with § 87(2)(a) 160.50 (Board Review 02). This arrest was subsequently sealed.

There was extensive video footage of this incident. § 87(2)(b) and three bystanders recorded portions of the incident on their cellphones (**Board Review 03-06**). PO Torres (**Board Review 07**) and PO Romero (**Board Review 08-09**) activated their BWCs during the incident. Additional officers arrived on scene at the end of the incident and activated their BWCs, including PO Macero, whose camera captured a brief portion of the incident (**Board Review 10**).

PO Schumacher has since been reassigned to the 75th Precinct.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Raul Torres entered § 87(2)(b) Apt. § 87(2)(b) in Brooklyn.

Allegation (B) Abuse of Authority: Police Officer Raul Torres seized § 87(2)(b)'s property.

PO Torres' BWC footage (**Board Review 07**) captures this portion of the incident from 00:35 through 01:00. The footage shows that the officers climbed onto the stoop at the front entrance of the residence, where § 87(2)(b) was standing with a red iPhone protruding from his pocket. As the officers were handcuffing § 87(2)(b) he asked § 87(2)(b) to take his phone. What happens next is not fully visible, but § 87(2)(b) quickly moves from the stoop into the residence, and PO Torres follows her inside while saying, "No." § 87(2)(b) complains that PO Torres has taken her phone, and PO Torres is visibly holding a gold/pink-colored iPhone.

§ 87(2)(b) provided a brief telephone statement to the CCRB (**Board Review 11**), but he was uncooperative in answering follow-up questions or providing a fuller statement. § 87(2)(b)

§ 87(2)(b) reported that he asked § 87(2)(b) to take his red iPhone, and PO Torres stated that this was not permitted. § 87(2)(b) removed the phone from § 87(2)(b)'s pocket and went inside the residence followed by PO Torres. § 87(2)(b) described his phone as a red iPhone 11.

§ 87(2)(b) testified (**Board Review 12**) that he was speaking to PO Romero while the officers were handcuffing § 87(2)(b) and was not looking at § 87(2)(b) and PO Torres. § 87(2)(b) heard the door to the apartment close and realized that § 87(2)(b) and PO Torres had gone inside. § 87(2)(b) subsequently learned from § 87(2)(b) that PO Torres had taken her phone, although he did not actually witness this himself.

§ 87(2)(b) testified (**Board Review 13**) that she did not believe that § 87(2)(b) was carrying a phone at the time of this incident, and she did not admit to removing § 87(2)(b)'s phone from his pocket. § 87(2)(b) testified that she entered the apartment to retrieve something and had not interacted with PO Torres up to this time. PO Torres entered the residence and took § 87(2)(b)'s gold/pink iPhone from her hand. § 87(2)(b) described her phone as a “rose gold iPhone 6S in a clear case.”

PO Torres testified (**Board Review 14**) that, while the officers were handcuffing § 87(2)(b), § 87(2)(b) said, “Mom, grab my phone.” The red iPhone was still in § 87(2)(b)'s left front pocket at this time. It was not permissible for § 87(2)(b) to take the phone because officers must voucher and safeguard all of the property on a defendant's person when he is arrested. It is not permissible for another individual to take property belonging to a person who is being placed under arrest. PO Torres did not know whether § 87(2)(b)'s phone would be vouchered as arrest evidence or for safekeeping, as he was not the arresting officer and the arresting officer and the supervisor are responsible for deciding how property will be vouchered. § 87(2)(b) reached into § 87(2)(b)'s pocket and took the red iPhone. PO Torres assessed that § 87(2)(b)'s action constituted OGA (obstructing governmental administration) in that § 87(2)(b) was “intervening” in an arrest by taking § 87(2)(b)'s property and running away. § 87(2)(b) immediately ran through the open door into the residence, which was approximately one arm's length away. PO Torres did not make any physical contact with § 87(2)(b) before she entered the residence. After § 87(2)(b) entered the residence, PO Torres said, “Give me the phone.” PO Torres did not recall saying anything else before subsequently following § 87(2)(b) into the residence. PO Torres entered the residence with the intention of retrieving the red iPhone and of arresting § 87(2)(b) for OGA. PO Torres approached § 87(2)(b) and removed the red iPhone from her hand.

PO Schumacher subsequently created a complaint report citing § 87(2)(b) for § 87(2)(b). The report states that § 87(2)(a) 160.50

(**Board Review 15**). PO Schumacher also prepared a property voucher for a cellphone with the owner listed as § 87(2)(b). The voucher shows that the phone was a “pink” iPhone “S” (**Board Review 16**).

An examination of Apple's iPhone product lines shows that there is no “S” model for the iPhone 11, while there is an iPhone 6S. Moreover, the iPhone 11 is available in six colors: purple, yellow, green, white, black, and red. The red color is clearly red and would not be mistaken for pink. On the other hand, the iPhone 6S is available in four colors: silver, gold, space grey, and rose gold. The rose gold color could easily be described as pink (see **Board Review 30** for images of the available colors for both models).

Although § 87(2)(b) did not acknowledge taking § 87(2)(b)'s mobile phone, the investigation established that she did remove the red iPhone from § 87(2)(b)'s pocket.
§ 87(2)(g)

Warrantless entry into a home is presumptively unreasonable and prohibited under the Fourth Amendment. Payton v. New York, 445 U.S. 573 (**Board Review 17**). Under the doctrine of hot pursuit, a suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place. United States v. Santana, 427 U.S. 38 (**Board Review 18**); People v. Thomas, 164 A.D.2d 874 (**Board Review 19**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: Police Officer Raul Torres used physical force against § 87(2)(b)

§ 87(2)(b) testified that, upon realizing that § 87(2)(b) and PO Torres had entered the apartment, he entered the apartment and told PO Torres that he should not be inside. PO Torres approached § 87(2)(b) and swung his hand to strike him, prompting § 87(2)(b) to duck and exit to the stoop. § 87(2)(b) denied that PO Torres shoved him, and he did not report using any physical force against PO Torres himself.

§ 87(2)(b) testified that, after § 87(2)(b) entered the apartment, PO Torres placed one hand on § 87(2)(b)'s chest and shoved him backwards, prompting § 87(2)(b) to stumble onto the porch.

PO Torres testified that § 87(2)(b) entered the apartment, placed one or both hands on PO Torres's shoulder area, and shoved PO Torres, causing PO Torres to stumble and to strike his body and feet against the apartment doorframe. PO Torres did not sustain any injuries as a result.

§ 87(2)(b) then approached PO Torres with his hands balled into fists. § 87(2)(b) said, "I will knock you the fuck out." PO Torres responded by holding out his hand at arm's length and placing his hand against § 87(2)(b)'s chest in order to keep § 87(2)(b) back. PO Torres ordered § 87(2)(b) to get back. PO Torres denied shoving or attempting to strike § 87(2)(b). § 87(2)(b) again placed one or both hands on PO Torres's shoulder area and shoved PO Torres, causing PO Torres to stumble out of the apartment door.

PO Torres's BWC captures this portion of the incident from 01:00 through 01:10. The footage does not appear to capture PO Torres either attempting to strike or shoving § 87(2)(b).

although it does show that PO Torres held out his hand to keep § 87(2)(b) back. Due to the speed of the interaction and the angle of the camera, however, the footage does not definitively rule out the possibility that there was additional physical contact. The footage does not definitely show whether § 87(2)(b) shoved PO Torres, but it does corroborate PO Torres's testimony that § 87(2)(b) issued a verbal threat.

§ 87(2)(g)

Allegation (D) Force: Police Officer Raul Torres used a non-lethal restraining device on

§ 87(2)(b)

There is extensive video footage of this portion of the incident, including PO Torres's BWC from 01:10 through 01:36, cellphone footage from bystander § 87(2)(b) (**Board Review 03**) from 00:00 through 00:25, and cellphone footage from bystander § 87(2)(b) (**Board Review 04**) from 00:00 through 00:20. The footage shows that PO Torres and § 87(2)(b) exited the residence and stood facing each other on the stoop within one arm's length of one another. PO Torres repeatedly ordered § 87(2)(b) to step back but § 87(2)(b) did not comply. PO Torres drew his Taser and pointed it at § 87(2)(b) who responded by using his hand to push the Taser away. § 87(2)(b) was not yet handcuffed and was struggling with PO Romero and PO Schumacher at this time on the small stoop, and a crowd of civilians was gathered at the base of the stoop yelling at the officers and civilians. After this continued for approximately 20 seconds, PO Torres fired the Taser, with both prongs striking § 87(2)(b) in the chest and deploying a charge.

PO Torres testified that he drew the Taser because § 87(2)(b) had pushed PO Torres, had made verbal threats, and was approaching PO Torres with his hands balled into fists. PO Torres wished to create distance between the officers and § 87(2)(b) overcome § 87(2)(b)'s aggression, and arrest § 87(2)(b). § 87(2)(b) reached out and slapped the Taser and PO Torres's hand, apparently attempting to knock the device out of PO Torres's hand. This action, in conjunction with § 87(2)(b) repeatedly saying, "Shoot me," pressing his chest against the barrel of the Taser, and approaching PO Torres with his hands balled into fists, prompted PO Torres to fire the Taser.

Patrol Guide Procedure 221-01 (Board Review 20) states that officers may use force when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. Any application or use of force must be reasonable under the circumstances. The reasonableness of force is assessed, in part, by the nature and severity of the crime/circumstances, the actions taken by the subject, the presence of hostile crowd or agitators, and whether the subject is actively resisting custody. Patrol Guide Procedure 221-08 (Board Review 21) states that a Taser should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons. A Taser is classified as a less lethal device and is intended to augment and provide a greater margin of safety for officers who might otherwise be forced to physically subdue a dangerous subject.

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Force: Police Officer Raul Torres used a non-lethal restraining device on

§ 87(2)(b)

Allegation (F) Force: Police Officer Raul Torres used a non-lethal restraining device on

§ 87(2)(b)

Allegation (G) Force: Police Officer Raul Torres used a non-lethal restraining device on

§ 87(2)(b)

Allegation (H) Force: Police Officer Raul Torres used a non-lethal restraining device on

§ 87(2)(b)

There is extensive video footage of this portion of the incident, including PO Torres's BWC from 01:36 through 02:25 (**Board Review 07**), cellphone footage from bystander § 87(2)(b) (**Board Review 03**) from 00:25 through 01:12, cellphone footage from bystander § 87(2)(b) (**Board Review 04**) from 00:23 through 01:05, and cellphone footage filmed by § 87(2)(b) (**Board Review 05**) from 00:00 through 00:35. The footage shows that, after PO Torres fired the Taser, § 87(2)(b) slowly stood up and pulled the Taser wires out of his chest. PO Torres pointed the Taser at § 87(2)(b) removed the spent cartridge, and pulled the trigger, causing the Taser to begin to deploy in drive stun mode. PO Torres approached § 87(2)(b) and jabbed the Taser at him. PO Torres ordered § 87(2)(b) to "back up," but did not issue any other commands. As PO Torres began attempting to place the Taser against § 87(2)(b) to drive stun him, § 87(2)(b) attempted to evade the Taser by moving backward. This process continued for approximately 35 seconds. PO Torres repeatedly pulled the trigger of the Taser so that its exposed electrodes continued to activate, and he jabbed the device towards § 87(2)(b) in attempts to drive stun him. PO Torres continued ordering § 87(2)(b) to "get back" but did not issue him any other commands. § 87(2)(b) reacted by moving away from PO Torres and stating, "I'm not fighting you," and, "I ain't doing nothing." For some of the time, PO Torres even held § 87(2)(b) against the stoop's railing with his free hand while drive stunning him and telling him to "back up." § 87(2)(b) generally attempted to avoid being stunned by the Taser—he pulled away from PO Torres, and he attempted to push the Taser away from him so the electrodes would not touch him. After 35 seconds, PO Torres first ordered § 87(2)(b) to put his hands behind his back, and § 87(2)(b) immediately complied. PO Torres held § 87(2)(b)'s hands behind his back and escorted him to the edge of the stoop to handcuff him.

§ 87(2)(b) testified that, after PO Torres shot him with the Taser, he stood up, pulled the wires out of his chest, and began to walk away from PO Torres. PO Torres pursued § 87(2)(b) and deployed approximately nine to ten drive stuns, prompting § 87(2)(b) to move away and to attempt to grab the Taser. This continued until § 87(2)(b) turned around and PO Torres handcuffed him.

PO Torres testified that he deployed drive stuns against § 87(2)(b) in order to gain § 87(2)(b)'s compliance. PO Torres confirmed that he ordered § 87(2)(b) to "get back" while deploying the drive stuns and that he did not recall issuing any other commands. PO Torres specifically recalled deploying four drive stuns before subsequently beginning to handcuff § 87(2)(b). During two of the four drive stuns, § 87(2)(b) placed his hand on the Taser, apparently in an attempt to grab it, and he scratched PO Torres's hand with his fingernail while doing so.

The Taser Data Sheet for PO Torres's Taser (**Board Review 22**) documents that PO Torres deployed the Taser four times over the 18-second period after he ejected the cartridge, which occurred at 18:17:42. Each cycle lasted for four to five seconds. The Taser Data Sheet does not record whether or for how long the Taser made contact with § 87(2)(b)'s body during each cycle.

Patrol Guide Procedure 221-08 states that a Taser should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons. The Procedure defines active resisting as physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody. The procedure defines active aggression as the threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. Officers should consider that exposure to the CEW for longer than fifteen seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. All applications must be independently justifiable, and the risks should be weighed against other force options.

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

Allegation (I) Force: Police Officer Raul Torres used a non-lethal restraining device on

§ 87(2)(b)

There is extensive video footage of this portion of the incident, including PO Torres's BWC from 02:25 through 02:45 (**Board Review 07**), cellphone footage from bystander "§ 87(2)(b)" (**Board Review 03**) from 01:12 through 01:32, cellphone footage from bystander § 87(2)(b) (**Board Review 04**) from 01:05 through 01:25, and cellphone footage filmed by § 87(2)(b) (**Board Review 05**) from 00:35 through 00:55. The footage shows that PO Torres ordered § 87(2)(b) to put his hands behind his back and to walk forward to stand against a wall. § 87(2)(b) complied with both commands. While PO Torres was holding § 87(2)(b)'s hands behind his back—but before he had begun to apply the handcuffs—bystanders threw two objects at the officers on the stoop, including a glass bottle which shattered. § 87(2)(b) made a sudden movement forward, prompting PO Torres to deploy one final drive stun.

§ 87(2)(b) testified that he knew that bystanders were throwing objects onto the porch, although he did not know whether any of these items struck anyone or realize that they included a glass bottle until after the incident. § 87(2)(b) did not testify that he pulled away from PO Torres or otherwise moved immediately prior to the final drive stun.

PO Torres testified that, after the glass bottle struck the stoop, § 87(2)(b) pulled away from PO Torres, but did not break PO Torres's grip on his arm. PO Torres deployed a drive stun against § 87(2)(b) and § 87(2)(b) stopped pulling away. PO Romero approached and grasped hold of § 87(2)(b) and PO Torres and PO Romero handcuffed § 87(2)(b).

Patrol Guide Procedure 221-08 states that a Taser should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons. The Procedure defines active resisting as physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody.

§ 87(2)(g)

Allegation (J) Force: Police Officer Donal Schumacher used physical force against § 87(2)(b)

§ 87(2)(b) testified that, after the officers had handcuffed § 87(2)(b) and escorted him off of the stoop, PO Schumacher and PO Macero, who had just arrived on the scene, grasped § 87(2)(b)'s arms and stood at the top of the stairs, apparently to escort § 87(2)(b) off of the porch. PO Schumacher kicked § 87(2)(b) once in his lower leg, in the manner that someone would kick a soccer ball. § 87(2)(b) assessed that PO Schumacher was attempting to force § 87(2)(b) down the stairs.

In his telephone statement, § 87(2)(b) did not recount that PO Schumacher kicked him. When asked directly whether it occurred, § 87(2)(b) responded that PO Macero attempted to trip him as he was walking down the stairs. § 87(2)(b) could not be asked

any more questions about this because he ended the call and was subsequently uncooperative in providing additional testimony.

There is extensive video footage of this portion of the incident, including PO Macero's BWC from 00:50 through 02:30 (**Board Review 10**), cellphone footage from bystander "§ 87(2)(b)" (**Board Review 03**) from 3:15, cellphone footage from bystander "§ 87(2)(b)" (**Board Review 04**) from 3:15, and cellphone footage filmed by a neighbor named "§ 87(2)(b)" (**Board Review 06**) from 01:20. The footage shows PO Schumacher, PO Macero, and "§ 87(2)(b)" standing at the top of the stairs before walking down and off the stoop. At no point does PO Schumacher kick "§ 87(2)(b)".

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to eight previous CCRB complaints and has been named as a victim in six allegations (**Board Review 23**).
 - § 87(2)(b)
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- § 87(2)(b) has been party to six previous CCRB complaints and has been named as a victim in nine allegations (**Board Review 24**).
 - § 87(2)(b)
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- § 87(2)(b) has been party to six previous CCRB complaints and has been named as a victim in 10 allegations (**Board Review 25**).
 - § 87(2)(b)
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- PO Schumacher has been a member of service for six years and has been a subject in one previous CCRB complaint and one allegation, which was not substantiated.
- PO Torres has been a member-of-service for six years and has been a subject in two previous CCRB complaints and four allegations, one of which was substantiated.
 - 201900826 involved an allegation of entry of premises against PO Torres. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming personal and physical injuries; an unlawful seizure; false arrest and imprisonment; malicious prosecution; abuse of process; negligence; intentional and negligent infliction of emotional distress; harassment; unconstitutional conditions of confinement; and to a deprivation of, his constitutional, civil and common law rights and seeking \$1,000,000 as redress (**Board Review 26**). A 50H hearing was held on § 87(2)(b).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- [REDACTED]
[REDACTED]

Squad: 5

Investigator:	<u>DG</u>	<u>IM Giansante for SI Phillips</u>	<u>September 22, 2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Daniel Giansante</u>	<u>IM Daniel Giansante</u>	<u>September 22, 2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date